Amendment 2/Supreme Court justices skeptical of state's argument

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From A1

the democratic process on an equal footing with other such groups. Though it cited numerous U.S. Supreme Court cases to support its decision, the Colorado court was the first in the nation to interpret those precedents in such a way.

The Colorado court then sent Amendment 2 back to Bayless for trial. After listening to two weeks of testimony last fall, Bayless decided that Amendment 2 did not meet the high legal standard required by the state Supreme Court. He struck it down.

On Thursday, Tymkovich argued that Bayless was wrong. The state, Tymkovich argued, had proved there are compelling reasons for Amendment 2. He said the law not only would protect the private and religious freedom of individuals who don't approve of homosexuality but also would help the state spend its resources more wisely in enforcing civil rights laws.

"It's appropriate for the people to decide which groups get civil rights and which don't," he said.

But several justices were skeptical.

WHAT'S NEXT

Both sides wait for the Colorado Supreme Court to issue its final ruling on Amendment 2. Then, the Colorado Attorney General's Office will probably appeal the decision again to the U.S. Supreme Court. But some legal experts believe chances are slim the nation's highest court will accept the petition because it turns down nearly 95 percent of the cases it's asked to review.

"My recollection of history both past and current does not conform with yours," said Justice Gregory Kellam Scott.

The court's newest member and only black, Scott suggested that it was by "no vote of the electorate" that oppressed groups in society had won civil rights.

"It was the judiciary," he said.

Chief Justice Luis Rovira challenged Tymkovich to "substitute the word homosexual in Amendment 2 for African-American or person of color."

"Tell me how the people have the right to single out that group" and prevent them from seeking protection from discrimination from their local city council or state Legislature, Rovira said.

Tymkovich replied that the comparison was inappropriate. Unlike gays and lesbians, racial minorities are a special case, he said. Like women, racial minorities traditionally have received more protection from the courts than other groups because of their long and unique history of discrimination.

He said the distinction raises a fundamental problem with the court's opinion on Amendment 2. By saying that any identifiable group has a fundamental right to participate in the democratic process, the ruling allows virtually any group to strike down laws left and right that they don't like. Incumbent politicians could challenge the constitutionality of term limitations, he suggested, and indigent women could fight to overturn laws that prohibit spending government money on abortions.

Justice William Erickson, the sole member who voted against the majority last time, agreed with Tymkovich's arguments.

"Has any previous case ever found a fundamental right to participate in the political process?" he repeatedly asked attorneys for both sides.

In crafting its argument, the Colorado court had relied specifically on two U.S. Supreme Court cases from the 1960s. In those, the U.S. Supreme Court struck down constitutional amendments in Ohio and California that prohibited governments from passing fair housing laws. Both required that voters approve any such laws.

Boulder Attorney Jean Dubofsky, who represents the half-dozen gay men and lesbians now challenging Amendment 2, said those cases are profoundly relevant to the issue even if they involve a unique group of racial minorities.

"Those cases were efforts to cut off the civil rights of African-Americans," she replied to Erickson. "There has not been an effort in the United States like that until we get to Amendment 2. The proponents of Amendment 2, at the time of the trial, said they were trying to cut off a civil rights movement. They called it 'militant gay aggression.' "

While the state could appeal the Colorado court's decision to the U.S. Supreme Court, it's unlikely to get a hearing there, said David Miller, an attorney with the American Civil Liberties Union in Denver who is helping with the case. The nation's highest court refuses to hear more than 95 percent of the cases it is asked to review and it already has denied the state's request that it examine the injunction.

Dubofsky, though, doesn't expect a quick resolution.

"We see this case going on for years," she told the court.

clinics.

"Taken together with the newly passed Freedom of Access to Clinic Entrances Act, the court's decision provides a powerful one-two punch that anti-choice extremists will have a hard time recovering from," said Sally Goldfarb of the NOW Legal

case . . . (and) ought to give all friends of liberty great concern."

The court, with only Justice John Paul Stevens dissenting, also said the Florida judge went too far when he barred all peaceful picketing within 300 feet of the clinic and within 300 feet of clinic employees' homes.

ALSO THURSDAY

In other action, the Supreme Court:

■ Ruled in a Florida case that federal voting rights law does not require the creation of the largest possible number of minority-dominated election districts.

■ Upheld a Georgia county's one-commissioner form of government against a Voting Rights Act challenge that said it diluted black voters' political clout.

■ Upheld the death penalty law in California, the state with the most death row inmates — nearly 400.

■ Ruled in a Texas case that federal judges can order a death-row inmate's execution to be postponed until a lawyer can be appointed to help prepare an appeal.

■ Spared the United Mine Workers from paying $52 million in contempt-of-court fines stemming from a violent 1989 labor strike in southwestern Virginia.

Associated Press

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STATE

Unfriendly court gets its hands on Amendment 2

FOR & AGAINST

THE STATE ARGUED:

■ That it had come up with enough evidence during last fall's trial to prove there are several compelling reasons to allow implementation of Amendment 2.

■ That the Colorado Supreme Court should "rethink" its position on Amendment 2. The court has maintained the law violates the fundamental rights of gays and lesbians to participate in the democratic process by seeking laws that protect them from discrimination.

OPPONENTS OF AMENDMENT 2 ARGUED:

■ The state had not presented enough evidence to show a compelling reason for Amendment 2.

■ Amendment 2 would fail even the least stringent legal test of constitutionality because it has no other purpose than to single out gays unfairly and squelch their budding civil rights movement.

By **Angela Dire**
Gazette Telegraph

DENVER — The fate of Colorado's ban on gay rights laws was left in the hands of an apparently skeptical Colorado Supreme Court on Thursday, one year after six of the court's seven justices all but struck it down as unconstitutional.

Arguing against the odds, the state's attorney urged the court to discard its groundbreaking decision and uphold the law approved two years ago by a solid majority of Colorado voters.

"We're giving this court a chance to rethink its opinion," Colorado Solicitor General Timothy Tymkovich said during hourlong oral arguments on Amendment 2.

The constitutional amendment prohibits any state or local government from passing laws that protect gay men and lesbians from discrimination based on sexual orientation. It has been tied up in court since voters approved it in November 1992.

Denver District Court Judge Jeffrey Bayless in January 1993 slapped an injunction on the state, preventing it from enforcing the ban. In July 1993, the Colorado Supreme Court upheld the injunction and also decided the amendment itself was probably unconstitutional because it would deny gays and lesbians the opportunity to lobby for laws that protect them from discrimination.

In essence, the court decided that any readily identifiable group has a fundamental right to participate in

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TODAY'S RECORDS

HIGH ..... 96° (1990) **LOW** .....43° (1951)

Road conditions: Call State Patrol 635-7623

Low Yesterday ..... 58°

SUN

Sunrise today 5:37
Sunset today 8:28
Sunrise tomorrow 5:38

COLORADO FORECAST

CENTRAL MOUNTAINS: Warm today with sunshine; a stray afternoon thunderstorm. Highs 75-92. Partly cloudy tonight. Lows 42-54.

FRONT RANGE: Hot today with a.m. sun and a mainly rain-free afternoon; a thunderstorm is possible late. Highs 90-96. Patchy clouds tonight. Lows 56-60.

WESTERN SLOPE: Mostly sunny and very warm to hot today. Highs 86-94. Mainly clear tonight. Lows 50-58.

EASTERN PLAINS: Hot today with sunshine, also an afternoon thunderstorm. Highs 94-99. Partly cloudy tonight. Lows 56-66.

City	Yest.		Today		Sat.		Sun.	
Akron	98	58 s	95	60 pc	94	58 pc	90	56 pc
Alamosa	84	42 s	83	48 pc	85	48 pc	85	48 s
Aspen	83	50 pc	83	52 pc	84	52 s	82	49 s
Denver	99	62 s	96	60 pc	95	60 pc	90	58 pc
Durango	93	50 s	88	54 pc	87	55 pc	90	53 s
Eagle	87	48 s	88	51 pc	88	52 s	86	50 s
Fort Collins	94	52 pc	93	59 pc	92	57 pc	88	57 pc
Grand Junction	102	67 s	94	65 pc	95	66 s	91	64 s
Gunnison	86	43 s	84	45 pc	86	45 s	82	44 s
La Junta	106	62 s	97	60 pc	101	66 pc	97	64 pc
Leadville	78	36 pc	77	44 pc	78	47 pc	77	43 pc
Limon	97	58 s	94	56 pc	95	54 pc	89	52 pc
Pueblo	96	58 s	96	59 pc	100	65 pc	95	63 pc
Rifle	98	54 s	91	54 pc	93	55 s	90	54 s
Trinidad	95	58 s	96	60 pc	98	64 pc	95	62 pc

Cedar City, UT	101	66 s	98	57 pc	89	60 s	88	57 s
Charleston, SC	87	71 t	88	72 pc	87	73 t	89	73 t
Charleston, WV	79	65 c	83	63 s	87	65 t	86	63 pc
Charlotte, NC	88	69 pc	89	69 pc	86	71 pc	91	70 t
Cheyenne, WY	93	57 s	86	56 s	87	55 pc	81	52 pc
Chicago, IL	81	59 s	88	66 pc	84	66 s	79	64 pc
Cincinnati, OH	81	62 pc	86	65 s	86	64 t	85	66 pc
Cleveland, OH	73	59 sh	85	66 s	86	59 t	76	61 pc
Columbus, OH	78	61 c	85	64 s	86	62 t	83	63 pc
Concord, NH	84	65 pc	85	56 s	87	59 pc	80	55 t
Dallas, TX	95	70 s	98	75 s	95	75 s	96	76 s
Davenport, IA	84	60 pc	89	64 pc	86	61 s	83	66 t
Des Moines, IA	87	59 s	88	64 s	83	65 sh	84	68 t
Detroit, MI	80	65 pc	87	65 s	85	57 s	77	63 pc
Duluth, MN	62	55 pc	74	49 pc	71	51 s	69	55 pc
El Paso, TX	111	77 s	112	78 s	100	76 pc	105	77 s
Fairbanks, AK	74	45 s	76	50 pc	76	48 c	72	46 pc
Fargo, ND	86	59 pc	77	53 pc	78	60 pc	80	59 t
Flagstaff, AZ	93	59 pc	80	49 c	81	54 pc	83	50 pc
Grand Is., NE	85	63 s	89	67 pc	86	66 t	88	66 pc
Great Falls, MT	87	47 s	82	51 pc	76	46 pc	66	44 pc
Hartford, CT	82	67 pc	87	61 s	89	63 pc	82	62 t
Hilo, HI	83	71 sh	84	68 pc	84	68 pc	84	70 pc
Honolulu, HI	90	76 pc	84	72 pc	86	74 pc	86	72 pc
Houston, TX	95	80 pc	96	76 s	92	73 s	93	75 pc
Indianapolis, IN	83	62 pc	87	65 s	87	62 pc	84	66 pc
New Orleans, LA	93							
New York, NY	85							
Norfolk, VA	88							
North Platte, NE	90							
Oklahoma City	98							
Omaha, NE	89							
Orlando, FL	91							
Philadelphia, PA	86							
Phoenix, AZ	108							
Pittsburgh, PA	73							
Portland, OR	78							
Providence, RI	79							
Rapid City, SD	94							
Reno, NV	95							
Richmond, VA	89							
Roswell, NM	103							
St. Louis, MO	90							
Sacramento, CA	88							
Salt Lake City, UT	99							
San Antonio, TX	99							
San Diego, CA	74							
San Francisco, CA	65							
San Jose, CA	75							
Santa Fe, NM	98							
Seattle, WA	67							
Shreveport, LA	94							

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